No. 83-1359

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

CHARLES H. LANDFRIED, SR., JAMES A. RASH, and WILLIAM E. JACKSON,
Plaintiffs-Petitioners,

vs.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, a Corporation,
Defendant-Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether claims of wrongful discharge brought by railroad workers who are covered by the Railway Labor Act, 45 U.S.C. §§151-188, are within the exclusive jurisdiction of the National Railroad Adjustment Board.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

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STATEMENT OF THE CASE

Plaintiff, Charles H. Landfried, was dismissed from the service of defendant, Terminal Railroad Association of St. Louis (Terminal), effective May 21, 1982. This dismissal was the result of an investigation held May 18, 1982, which revealed that Mr. Landfried failed to report an alleged personal injury in violation of General Rule F and General Rule 1110 of the Terminal Safety Rules.

As the result of an investigation held August 26, 1981, plaintiff, James A. Rash, was dismissed from the service of Terminal effective September 2, 1981. The August 26, 1981, investigation

revealed that Mr. Rash had violated Safety Basic Rule 1, Safety Rule 33(d), Safety Rule 33(e) and Operating Rule 108 in connection with an alleged personal injury occurring April 11, 1981.

Plaintiff, William E. Jackson, was dismissed from the service of Terminal effective May 26, 1981. Mr. Jackson's dismissal was the result of an investigation held May 12, 1981, which revealed that he was guilty of insubordination in failing to comply with specific instructions from his foreman.

On July 19, 1982, plaintiffs filed an action in the United States District Court, Eastern District of Missouri, complaining of their dismissals. Plaintiffs' Amended Complaint, filed September 7, 1982, sought injunctive and monetary relief alleging that plaintiffs were wrongfully discharged in retaliation for filing claims under the Federal Employers' Liability Act, 45 U.S.C. §§51-60. The Amended Complaint alleged, that in dismissing the plaintiffs, Terminal had failed to comply with the requirements of the collective-bargaining agreements entered into between the railroad and the plaintiffs' unions.

On September 22, 1982, defendant moved the District Court to dismiss plaintiffs' Amended Complaint. By an Order dated December 15, 1982, the District Court granted defendant's motion and dismissed plaintiffs' Amended Complaint on the grounds that plaintiffs' claims were minor disputes within the exclusive jurisdiction of the National Railroad Adjustment Board and that plaintiffs had failed to exhaust their administrative remedies. Plaintiffs' Motion to Amend, Alter and Reconsider, filed December 23, 1982, urged that *Hendley v. Central of Georgia R. Co.*, 609 F.2d 1146 (5th Cir. 1980), cert. denied 449 U.S. 1093 (1981), established jurisdiction in the District Court. Plaintiffs' Motion was denied on January 14, 1983.

Plaintiffs' Notice of Appeal to the United States Court of Appeals for the Eighth Circuit was filed January 28, 1983. The Court of Appeals affirmed the District Court's dismissal of

plaintiffs' Amended Complaint in an opinion filed November 22, 1983. The Court of Appeals held that, under *Andrews v. Louisville & Nashville Railroad Company*, 406 U.S. 320 (1972), plaintiffs' claims are subject to the exclusive jurisdiction of the National Railroad Adjustment Board.

All three plaintiffs have individually pursued the administrative remedies available to them under the Railway Labor Act. Plaintiffs Rash and Jackson have pursued these remedies to their conclusion. Plaintiff Rash was awarded relief through these administrative procedures. Plaintiff Jackson's claim was denied. Plaintiff Landfried's administrative claim is still pending and is scheduled to be heard before the Third Division of the National Railroad Adjustment Board during the week of March 12, 1984.

SUMMARY OF REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

The Petition for Writ of Certiorari should be denied because the Court of Appeals correctly held that this Court's decision in *Andrews v. Louisville & Nashville Railroad Company*, 406 U.S. 320 (1972) is applicable to plaintiffs' claims and precludes plaintiffs from adjudicating their claims in federal court. The Petition should also be denied because no conflict exists among the Circuit Courts of Appeals.

REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

This Court's Decision in *Andrews v. Louisville & Nashville Railroad Company*, 406 U.S. 320 (1972), Is Clearly Applicable To Plaintiffs' Claims.

In order to promote stability in labor-management relations in the national railroad industry, Congress enacted the Railway Labor Act, 45 U.S.C. §§151-188 (the Act). *Union Pac. R. Co. v. Sheehan*, 439 U.S. 89, 95 (1978), reh'g denied 439 U.S. 1135 (1979). Among the provisions of the Act designed to provide remedies for the resolution of disputes between railroads and their employees is 45 U.S.C. §153 First (i). Under §153 First (i), disputes between an employee and a railroad concerning the interpretation of the terms of a collective-bargaining agreement are within the exclusive jurisdiction of the National Railroad Adjustment Board (the Adjustment Board). *Glover v. St. Louis-San Francisco Railway Co.*, 393 U.S. 324 (1969); *Andrews v. Louisville & Nashville Railroad Company*, 406 U.S. 320 (1972). Congress considered it essential that these minor disputes be kept within the Adjustment Board and out of the courts. *Trainmen v. Chicago R. & I. R. Co.*, 353 U.S. 30, 40 (1957). In *Andrews*, this Court considered the wrongful discharge claim of a railroad worker who alleged that the defendant railroad had wrongfully refused to allow him to return to work following an automobile accident. The *Andrews* Court carefully considered the nature of wrongful discharge claims and their relationship to the clear congressional intent embodied in the Railway Labor Act. The Court held:

> * * * [T]he only source of petitioners' right not to be discharged, and therefore to treat an alleged discharge as a "wrongful" one that entitles him to damages, is the collective-bargaining agreement between the employer and the union. * * * Thus petitioners' claim and respondent's disallowance of it, stem from differing interpretations of

> the collective-bargaining agreement. * * * His claim is therefore subject to the Act's requirement that it be submitted to the Board for adjustment.
>
> *Andrews*, 406 U.S. at 324.

The *Andrews* decision dictates that plaintiffs' wrongful discharge claims here are within the exclusive jurisdiction of the Adjustment Board as disputes involving the interpretation of collective-bargaining agreements. Plaintiffs' attempt to distinguish *Andrews* is clearly rebutted by the specific allegations of the Amended Complaint that Terminal failed to comply with the requirements of the collective-bargaining agreements entered into between Terminal and the plaintiffs' respective unions.

Plaintiffs' Petition for Writ of Certiorari should be denied because the Court of Appeals correctly held that plaintiffs' claims are within the exclusive jurisdiction of the National Railroad Adjustment Board.

No Conflict Exists Among The Federal Circuit Courts Of Appeals.

In their Petition, plaintiffs cite the cases of *Hendley v. Central of Georgia R. Co.*, 609 F.2d 1146 (5th Cir. 1980), cert. denied 449 U.S. 1093 (1981) and *Bay v. Western Pac. R. Co.*, 595 F.2d 514 (9th Cir. 1979) for the proposition that there is a conflict among the Circuit Courts of Appeals sufficient to warrant a review on writ of certiorari. The *Hendley* decision, however, is clearly distinguishable from *Bay* and the case at bar. In *Hendley*, the defendant railroad disciplined an employee specifically for furnishing information to a Federal Employers' Liability Act (FELA) plaintiff. This disciplinary action was a per se violation of 45 U.S.C. §60 which makes it a criminal offense to attempt to prevent any person from voluntarily furnishing such information. Since the employee's actions in *Hendley* were specifically protected by §60, and could not

lawfully be the subject of disciplinary action, the *Hendley* Court held that arbitration by the Adjustment Board was not required. *Hendley,* 609 F.2d at 1153. The *Hendley* Court held that:

> Section 60 * * * is a specific prohibition of certain conduct by a railroad. A plaintiff may not be denied access to the federal courts when his employer uses its grievance procedures and disciplinary powers in direct violation of this statute.
>
> *Hendley,* 609 F.2d at 1152.

It was also noted in *Hendley* that "* * * the issue before the court does not involve interpretation of a collective-bargaining agreement, an appropriate matter for resolution by arbitration." *Hendley,* 609 F.2d at 1151.

Here, as in *Bay,* plaintiffs do not allege any violation of the specific prohibitions of §60. They merely claim that 45 U.S.C. §55 is "similar" to §60 and that a cause of action should be recognized by implication under §55. No such cause of action has been recognized by the courts. In fact, the *Bay* Court specifically addressed this issue and held that it was not the intent of Congress to create such a cause of action under the FELA. *Bay,* 595 F.2d at 516.

The Court of Appeals below recognized that *Bay,* and not *Hendley,* is applicable to plaintiffs' claims here when it stated:

> We might reach a different conclusion if, as in *Hendley v. Central of Georgia Railroad Co.,* 609 F.2d 1146 (5th Cir. 1980), cert. denied, 449 U.S. 1093, 101 S.Ct. 890, 66 L.Ed.2d 822 (1981), plaintiffs could show that their discharge constitutes the violation of a specific federal statutory section. But we do not need to decide whether we would adopt the view taken by the Fifth Circuit in *Hendley,* for the fact is that Congress has not enacted a statute prohibiting an employer from discharging an

> employee in retaliation for filing a FELA action. Given the availability to plaintiffs of recourse to the arbitration procedure established under the RLA, there is little reason for a federal court to imply a right of action where Congress has not acted to create one. Although the language of 45 U.S.C. §55 declares "void" any "device" utilized by a common carrier to exempt itself from FELA liability, that section does not provide a cause of action for an employee discharged in retaliation for filing a FELA action. See *Bay v. Western Pacific Railroad, supra.*
>
> 721 F.2d at 256.

The *Bay* decision is also supported by the recent decision in *Jackson v. Consolidated Rail Corp.*, 717 F.2d 1045 (7th Cir. 1983), cert. denied 52 U.S.L.W. 3551 (U.S. Jan. 23, 1984). In *Jackson,* the Seventh Circuit held:

> We * * * concur with the distinction recognized by the *Hendley* court between cases premised on a federal statutory provision and those premised on a federal policy and hold that the policies underlying the FELA do not overcome the RLA mandate that Jackson's exclusive remedy lay with administrative grievance procedures.
>
> Jackson, 717 F.2d at 1051.

Plaintiffs' Petition cites the case of *Smith v. Atlas Off-Shore Boat Service, Inc.*, 653 F.2d 1057 (5th Cir. 1981) for the proposition that a cause of action should be implied under the FELA. The right of action recognized in *Smith* is, however, completely distinguishable from plaintiffs' claims here. The plaintiff in *Smith* was an at-will employee not covered by the Railway Labor Act who, in the absence of the court's recognition of a maritime tort, would have had no forum to present his claim.

Plaintiffs' Petition also cites several state court opinions for the proposition that the public policy recognized in those deci-

sions should be equally applicable to wrongful discharge claims brought by railroad workers covered by the Railway Labor Act. These state court decisions are clearly inapplicable to such claims. Each of the plaintiffs in the state court cases cited were at-will employees not covered by the Railway Labor Act. None of the cited state court decisions dealt with the important issue of potential interference with the federal regulatory scheme embodied in the Act.

Plaintiffs' Petition also urges recognition of an implied cause of action because of alleged inadequacies in the administrative procedures available under the Act. The Petition mentions only briefly that the administrative claims of plaintiffs Rash and Jackson have already been pursued to completion and that the administrative claim of plaintiff Landfried is nearing completion. By urging the Court to recognize a new cause of action, plaintiffs are seeking the ability to ignore and/or abandon the required administrative process and prosecute their claims in federal court.

This Court has clearly recognized that the effectiveness of the National Railroad Adjustment Board depends on the finality of its determinations. *Sheehan,* 439 U.S. at 94. The *Andrews* Court specifically held that "A party who has litigated an issue before the Adjustment Board on the merits may not relitigate that issue in an independent proceeding." *Andrews,* 406 U.S. at 325.

To allow railroad workers to circumvent the administrative procedures mandated by Congress would be to judicially repeal the Railway Labor Act and to deluge the courts with minor disputes involving the interpretation of collective-bargaining agreements.

Plaintiffs' Petition for Writ of Certiorari should be denied because no conflict exists among the Circuit Courts of Appeals.

CONCLUSION

For the reasons stated above, the defendant prays that plaintiffs' Petition for Writ of Certiorari be denied.

Respectfully submitted,

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